



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 30, 2003

Ms. Sandra Smith
Texas State Board of Chiropractic Examiners
333 Guadalupe, Suite 3-825
Austin, Texas 78701-3942

OR2003-9362

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 193552.

The Texas State Board of Chiropractic Examiners (the "board") received a request for the case file regarding two named chiropractors. You state that some responsive information has been provided to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.026 and 552.101 of the Government Code and the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of Title 20 of the United States Code. We have reviewed the submitted information and have considered your arguments.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain numerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" are those records, files, documents, and other materials which

- (i) contain information directly related to a *student*; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A) (emphasis added). For purposes of FERPA, a “student”

includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, *but does not include a person who has not been in attendance at such agency or institution.*

Id. § 1232g(a)(6) (emphasis added). Section 552.026 of the Government Code provides that

[t]his chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov’t Code § 552.026. Section 552.114 of the Government Code excepts from public disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. *See* Open Records Decision No. 539 (1990).

You assert that the submitted transcripts constitute “education records” that are confidential under FERPA. You do not indicate, however, and we are not otherwise informed that the board qualifies as an educational agency or institution for purposes of FERPA. We therefore conclude that FERPA is not applicable to any of the submitted information. *See also* 20 U.S.C. § 1232g(a)(3); 34 C.F.R. §§ 99.1, 99.3; Open Records Decision No. 390 at 2-3 (1983) (City of Fort Worth not educational agency or institution for purposes of FERPA).

We note, however, that the submitted documents contain the named chiropractors’ social security numbers. Section 56.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001. It appears that the board obtained the chiropractors’ social security numbers in connection with the issuance of professional licenses. Accordingly, we find that the social security numbers in the submitted materials are confidential under section 56.001

of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

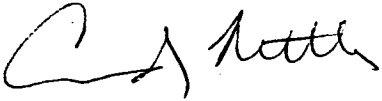
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles", written over a horizontal line.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 193552
Enc. Submitted documents

c: Ms. Lanette Myers
Paul B. Van Ness & Associates
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(w/o enclosures)